

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Larry Neely,	:	
	:	
Petitioner	:	Case No.2:07-cv-0303
	:	
v.	:	Judge Frost
	:	
Ernie Moore, Warden, Lebanon	:	Magistrate Judge Abel
Correctional Institution,	:	
	:	
Respondent	:	
	:	

Report and Recommendation

Petitioner Neely, a prisoner at the Lebanon Correctional Institution, brings this action for writ of habeas corpus under 28 U.S.C. §2254. This matter is before the Magistrate Judge for preliminary consideration under Rule 4, Rules Governing Section 2254 Cases in United States District Courts.

The petition alleges that on December 1, 2004, petitioner Neely was convicted of murder in the Court of Common Pleas for Montgomery County, Ohio. He was sentenced to a term of 15 years to life in prison.

Under the provisions of S.D. Ohio Civ. R. 82.1(f), the venue for non-death penalty habeas corpus cases is at the seat of court serving the county in the State of Ohio where the conviction occurred. Montgomery County is venued in the United States District Court for the Southern District of Ohio, Western Division at Dayton. S.D. Ohio Civ. R. 82.1(b).

Accordingly, the Magistrate Judge RECOMMENDS that this action be TRANSFERRED to the United States District Court for the Southern District of Ohio, Western Division at Dayton.

The Clerk of Court is DIRECTED to mail or email a copy of this Order to the Attorney General of Ohio, Corrections Litigation Section, 150 E. Gay St., 16th Floor, Columbus, OH 43215.

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-52 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also, Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

s/Mark R. Abel
United States Magistrate Judge